



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 28, 2022

IN THE MATTER OF:

Appeal Board No. 621667

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination ruling the claimant is not entitled to receive benefits, effective June 28, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law §511.1 because the claimant had no covered base period employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant and on behalf of the Commissioner of Labor. By decision filed February 16, 2022 (A.L.J. Case No.), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for unemployment insurance benefits on June 28, 2021. A base period was established from January 1, 2020, to December 31, 2020.

The claimant and her daughter are equal owners of a day care business started in October 2013. The business was initially opened as a Limited Liability Company (). In 2016, when the claimant ran into financial difficulties, she was advised to convert the to an "S" corporation to alleviate some of the business's tax liability. Converting to S corporation status also allowed the

claimant and her daughter to be considered employees of the S corporation and to receive wages. The S corporation was formed on January 1, 2017.

Both claimant and her daughter were paid wages and received dividends from the S corporation from 2017 until June 25, 2021, when they ceased doing business. The claimant received a W-2 from the S corporation and declared her income on her tax returns. The claimant reported the Quarterly Combined Withholding Wage Reporting and Unemployment Insurance Return (NYS-45-ATT) for S corporation.

OPINION: Pursuant to Labor Law § 517 (1), remuneration means every form of

compensation for employment paid by an employer to an employee, whether paid directly or indirectly by the employer, including salaries, commissions, and bonuses. For federal income tax purposes, a subchapter S corporation is a closely held corporation that does not pay any federal income taxes but elects under Subchapter S of Chapter 1 of the Internal Revenue Code for the corporation's income or losses to be divided among and passed through to its shareholders who must report the income or loss on their own individual income tax returns. See, 26 U.S. Code § 1361. (See also Appeal Board No. 567371)

Here the record established that the was converted to a S corporation in 2017, which continued in effect until June 25, 2021. The S corporation reported the claimant's earnings to the Department of Labor in its Quarterly Wage Reports. The earnings that the claimant received through the S corporation are remuneration for the purposes for determining whether the claimant is able to establish a valid original claim. As the claimant was paid remuneration from the S corporation during her base period from January 1, 2020, until December 31, 2020, the determination which held she had no covered employment under Labor Law § 511.1 cannot be sustained. However, as the

claimant was paid remuneration, the issue of whether she has sufficient earnings from the S corporation to establish a valid original claim, and the amount of her benefits from that claim, are referred to the Department for redetermination and calculation.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination ruling the claimant not entitled to receive benefits, effective June 28, 2021, on the basis that the claimant was unable

to file a valid original claim pursuant to Labor Law § 511.1 because the claimant had no covered base period employment is overruled.

The issue of whether she has sufficient earnings from the S corporation to establish a valid original claim, and the amount of her benefits from that claim, are referred to the Department for redetermination and calculation

RANDALL T. DOUGLAS, MEMBER